

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

ANANDA CAMARGO CHAVEZ,
Plaintiff,

v.

REBUILT BROKERAGE LLC d/b/a
REBUILT REALTY AND REBUILT
OFFERS LLC
Defendant.

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Case No. 1:24-cv-504-RP

**DEFENDANTS’ RESPONSE TO PLAINTIFF’S SUPPLEMENT TO MOTION
TO DESIGNATE EXPERT OUT-OF-TIME**

COMES NOW, Defendants Rebuilt Brokerage LLC d/b/a Rebuilt Realty and Rebuilt Offers LLC (collectively the “Defendants”), and files this Response Supplement to Designate Expert Out-Of-Time (the “Supplementation”) as follows:

I.

1. Plaintiff filed her Supplementation, without conferring with counsel for Defendants as to the matter, on March 7, 2025. Doc. 32; see Local Rule CV-7(G) (“The court may refuse to hear or may deny a nondispositive motion unless the movant advises the court within the body of the motion that counsel for the parties have conferred in a good-faith attempt to resolve the matter by agreement and certifies the specific reason that no agreement could be made.”).

2. Plaintiff makes two claims therein that need to be specifically addressed, as once again there are several fatal flaws in Plaintiff’s attempts to certify a class.

3. First, Plaintiff claims “Mr. Woolfson’s analysis has revealed 13,115 unique telephone numbers, or class members, including the Plaintiff, who were sent at least two text messages to their numbers on the National Do Not Call Registry, in violation of the TCPA.” Doc. 32 at 1. This claim makes no mention of the fact that Rebuilt only sent text messages to individuals who had

provided their number through an online opt-in form, and in doing so provided express written consent to be contacted in this matter.

4. In fact, the Expert Declaration of Aaron Woolfson, which Plaintiff served the same time as filing this Supplementation, does not even mention the word “consent” at all.

5. There is no way to determine that Rebuilt was not texting an account in this alleged class with consent without looking into each and every account individually, which defeats the purpose of class certification.

6. Plaintiff has no evidence that Defendants did not have consent to text any other member of this class.

7. Thus, the expert report states nothing of the main defense to class certification in this matter.

8. Plaintiff and Plaintiff’s counsel have never stated how they intend to address this issue in their class certification, and the expert report is likewise silent as to this issue.

9. Plaintiff also claims, “Mr. Woolfson’s analysis has also revealed 189 additional telephone numbers, or class members, who received over 7,400 message advertisements after having texted STOP and received confirmation that they were removed from the Defendant’s list, also in violation of the TCPA.”

10. This is immaterial, as Plaintiff is not a part of this class. Plaintiff cannot represent this class, and the Plaintiff cannot establish standing as to each of these alleged class members.

11. Plaintiff has readily admitted, in written discovery and at deposition, that she never requested any text messages to her cease, and therefore she cannot be class representative.

12. Thus, Plaintiff cannot represent this alleged class, and cannot certify a class as this alleged class, as Plaintiff is not representative of the class.

13. On this basis, this Court should exclude the expert report for being untimely, as it will not materially advance the resolution of this case, as Plaintiff's expert does not address the key issue in this case and opines on classes that the Plaintiff cannot certify in this matter. Thus, the expert report provides no clarification as to any issues in this matter.

WHEREFORE, PREMISES CONSIDERED, Defendants Rebuilt Brokerage LLC d/b/a Rebuilt Realty and Rebuilt Offers LLC respectfully request this Court deny Plaintiff's attempted to designate an expert out-of-time.

Respectfully submitted,

MARTIN GOLDEN LYONS
WATTS MORGAN PLLC

/s/ Xerxes Martin

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded via CM/ECF system to all parties entitled to notice of the same on this 14th day of March 2024.

/s/ Xerxes Martin

EUGENE XERXES MARTIN, IV